

State of New York
Commission on Judicial Conduct

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

Determination

STEWART DeVAUL,

a Justice of the Cicero Town Court,
Onondaga County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II*
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel)
for the Commission

Jacobs and Forward (By Bruce O. Jacobs) for
Respondent

* Judge Alexander resigned from the Commission on January 29, 1985. The vote in this matter was on January 18, 1985.

The respondent, Stewart DeVaul, a part-time justice of the Cicero Town Court, Onondaga County, was served with a Formal Written Complaint dated July 13, 1984, alleging that he allowed his law partner to appear in his court and that his law firm contributed to political campaigns in which respondent was not a candidate. Respondent filed an answer dated August 15, 1984.

On November 30, 1984, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 13, 1984.

The administrator filed a memorandum with respect to sanction. Respondent neither filed a memorandum nor appeared for oral argument. On January 18, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary Findings:

1. Respondent is a justice of the Cicero Town Court and was during the time herein noted.

2. From August 1980 through the present, respondent and Thomas W. Myers have been engaged in the private practice of law in the firm of DeVaul and Myers.

3. Respondent's interest in the partnership is 25 percent. Mr. Myers' interest in the partnership is 75 percent.

As to Charge I of the Formal Written Complaint:

4. On January 18, 1984, Mr. Myers represented the Town of Cicero in respondent's court before Justice Harvey Chase in the trial of David B. Kazel, who was charged with a town ordinance violation.

5. In June 1983, Mr. Myers represented the Town of Cicero in respondent's court before Judge Chase in a proceeding against Earl George, Jr., who was charged with a town ordinance violation.

6. In May 1981, Mr. Myers represented the Town of Cicero in respondent's court before Judge Chase in a proceeding against Stanley Pryzstuta, who was charged with a town ordinance violation.

7. In May 1982, Mr. Myers represented the Town of Cicero in respondent's court before Judge Chase in a town ordinance violation proceeding against Mr. Pryzstuta.

As to Charge II of the Formal Written Complaint:

8. On August 15, 1980, a check in the amount of \$100, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Cicero Republican Committee.

9. On April 7, 1981, a check in the amount of \$100, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Independent Citizens Committee.

10. On April 14, 1982, a check in the amount of \$250, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the "Committee for Hogan, Kavanaugh and Bradley".

11. On October 13, 1982, a check in the amount of \$100, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Committee to Elect John M. Hall.

12. On July 27, 1983, a check in the amount of \$200, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the "Committee for Hogan, Bradley and Kavanaugh".

13. On September 15, 1983, a check in the amount of \$50, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Committee to Re-Elect Frank Rego.

14. On September 30, 1983, a check in the amount of \$50, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Committee for Frank Rose.

15. Each of the contributions was made to political campaigns in which respondent was not a candidate.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(f) and 100.7(b) of the Rules Governing Judicial Conduct and Canons 1, 2 and 7A(1)(c) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they allege that respondent allowed his law partner to appear in his court and made political contributions to campaigns in which he was not a candidate. Respondent's misconduct is established.

On four occasions, respondent's law partner appeared in respondent's court before another judge, in clear violation of Section 100.5(f) of the Rules Governing Judicial Conduct which provides, "No judge who is permitted to practice law shall permit his or her partners or associates to practice law in the court in which he or she is a judge." The onus was on respondent to ensure that his partner did not practice in his court. By failing to do so, respondent engaged in misconduct.

Respondent also violated Section 100.7(b) of the Rules which prohibits contributions by a judge to political campaigns in which he or she is not a candidate. Respondent's law firm,

in which he has a one-quarter interest, made seven contributions to campaigns in which respondent was not a candidate.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

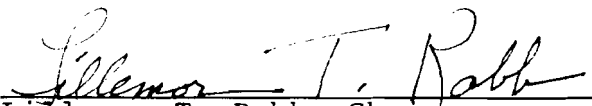
Mrs. Robb, Mr. Bower, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Mr. Bromberg were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: March 22, 1985


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct